

583 L. 8
4

A N S W E R

T O

A PAPER, intituled, *The Case of Lord PIGOT,*

DISTRIBUTED

At the Door of the HOUSE OF COMMONS,

On MONDAY, the 29th MARCH last;

WHEN THE

Consideration of the Conduct of the Council of MADRAS
stood the Order of the Day.

K

On the Part of Mr. STRATTON and the Majority of Council.

Printed 15th APRIL, 1779.

A N S W E R

T O

A P A P E R, intitled, The Case of Land Rights,

D I S T R I B U T E D

At the Door of the House of Commons,

On Monday, the 29th March last;

W H E N T H E

Consideration of the Conduct of the Council of Madras
stood the Order of the Day.

On the Part of Mr. STRATTON and the Majority of Council.

Printed 15th April, 1779.

A N S W E R

T O

LORD *P I G O T*'s C A S E.

THE accidental death of Lord Pigot, during the late unhappy disturbances at Madras, had, by the artifices and falsehoods of bad men, raised a strong and almost universal prepossession against the authors of his imprisonment, before the arrival either of themselves, or of the evidence necessary to protect them.

That unfortunate event became a powerful and dangerous weapon in the hands of their enemies here; as, by an infamous imposition on feelings very honourable to the human mind, it enabled them to subject their conduct to the dominion of prejudice and passion, which would otherwise have been impartially measured upon the scale of political necessity and law.

To those who are acquainted with the modes by which prejudices of all kinds are kept up, even when the evidences of their falsehood lie within universal reach, and open to the most vulgar observation, it will not be a subject of surprise, that the Majority of the Council, whose justification depended upon facts the proofs of which were involved in a long train of circumstances, and lying at an immense distance, should be obliged, for a season, to rely on the acquittal of their own consciences and the protection of their friends, without offering any au-

B

thoritative

thoritative defence to the Public of their supposed usurpation and subversion of the Government of Fort St. George.

They, besides, thought it their duty to await the decision of their immediate superiors, to whom they were in the first instance responsible, and who had directed a regular inquiry to be made into the facts necessary to found a judgment on their conduct; a judgment which they would still have awaited, had not an immediate attention to their honour and safety obliged them to make this personal appeal to the justice of their fellow-citizens.

The public distribution of a paper, called the Case of Lord Pigot, to all the Members of the House of Commons, for the evident purpose of precipitately promoting some resolutions hostile to their characters and safety, laid them under the necessity of endeavouring to counteract such purpose by the same channel; the various publications containing their defence at large, being too voluminous to circulate.

So extraordinary a violation of the chaste and decent rules of public justice alarmed them: they believe it is the first public canvas for a criminal prosecution, that ever existed in this free country; the first indictment against Englishmen that was ever circulated amongst the people's representatives at the door of the House of Commons.

When the House, indeed, is assembled upon the enactment of public laws, which may involve in their consequences the infringement of *private* rights, the indulgence of the Legislature permits the subject to petition it, and even to solicit and instruct its component members by such a distribution of Cases; but when it is assembling to deliberate upon grounds of public policy and justice, whether it shall deliver up
subjects,

subjects, though not regularly impeached before them, as victims to more than the laws; to a species of prosecution repugnant to their spirit, and beyond their ordinary powers; for any private individual, on such a public occasion, actuated by private resentment, to circulate a false and criminal charge against the objects of such inquiry, *even in the very hour of judgment*, is an oppression of them, which can only be equalled by the stab it gives to the public security, and the insult it offers to the House.

They are the more cruelly situated on this occasion, inasmuch as circumstances take off from the impression which such an unjust and unprecedented conduct would otherwise produce in their favour. The feelings of a brother are, in many minds, a full justification, and operate even in theirs as an excuse. It is not their wish to insult *his* feelings, but to prevent *yours* from being abused: they, too, have connections, whose feelings call for equal attention; the honor of the living is as sacred a call on humanity and justice, as the memory of the dead.

The publication of Lord Pigot's Case is professed not to be intended to bias opinion, or to captivate favour, but to consist only of a naked recapitulation of facts, faithfully stated in chronological order, *without one argument or inference*.

How far, therefore, the facts are faithfully stated, and how far the omission of all argument and inference is a proof of the fairness it pretends to, they likewise submit to the candour and good sense of the reader.

The charge against the Majority of the Council being for an usurpation and subversion of the Government of Madras, the first point

to be inquired into must necessarily be, *where*, or *in whom*, this Government so usurped and subverted, resided ; because usurpation and subversion do in this case, imply, that a part of the Government had assumed a supremacy not vested in it, in derogation of some other part of it, in which such supremacy either singly or concomitantly existed.

If the President be an integral substantive part of the Government of Fort St. George, by which his concurrence becomes necessary to every act of the Council, the Majority have erred ; and their conduct can admit of no palliation or excuse, but that of error in judgment, or a misconception of authority.

If, on the other hand, the President be not an integral part of the Government, but only the first in Council, and bound by the acts of the Majority, then it is impossible to say that such Majority have usurped or subverted the Government : for how can any power be said to be usurped, which belongs of right to the party exercising it, or a Government be said to be subverted by the authority of the very powers which constitute it ?

This, therefore, is not only the obvious issue on which to try the charge in question (Lord Pigot himself having in fact, assumed such power as President), but the issue they are expressly called upon to join with the writers of his Case distributed at the door of the House, who say, " That Lord Pigot, convinced he had the same negative upon the " proceedings of the Council, as the Council had upon the proceedings " of the Governor, and that as no act of his could be an act of Government without their consent, so neither could any act of theirs be " an act of Government without his consent, did not take upon him to " order Mr. Russel to proceed without the consent of the Majority, but

“ but confined himself to a simple refusal of putting the question, for
 “ taking into consideration the draught of instructions to Colonel Stuart,
 “ art, *determined, because he thought it necessary so to determine,* that
 “ both appointments should take place together, or not to consent to
 “ the sending Colonel Stuart, till the Company's pleasure was
 “ known.”

If Lord Pigot by the constitution of the Government had such power as is here assumed, the Majority of the Council have already pleaded guilty: if he had not, then he was the usurper and subverter, and the Majority of the Council, in resisting such illegal claims, were only maintaining the Government against his usurpation and subversion. It is impossible for any prejudice, however dark or obstinate, to deny the fairness of this proposition, as far as it extends to fix the question of legal right; and therefore let it be tried abstractedly before those facts are stated which will bring forward another question, that must likewise be decided in favour of the Council, before they can be justified:

Namely, the political necessity which impelled them to extend these powers, however legally delegated to them for the ordinary administration of the Government, to purposes beyond the compass, and contrary to the intention, of such delegation, in the suspension and imprisonment of the President.

For although, where the supreme power in a Government that has no superior acts corruptly and contrary to the ends of its establishment, there is no tribunal but Heaven to appeal to; yet when one Government is subordinate to another, as in the present instance, the case is very different. The Majority of the Council freely admit, that,
 even

even granting the supreme powers to have been legally vested in them, yet if they exerted such powers to bad purposes, from corrupt motives, the East India Company ought to dismiss them, and the Crown of England ought to punish them. But, on the other hand, although the suspension and imprisonment of Lord Pigot may not be justifiable, as an exercise of the ordinary and provided powers of the Government (since the law will never make a special provision for a case which supposes the Government it establishes to fall off from the ends of its institution); yet if the necessity justified it, if there was no safe middle road between an absolute surrender of all the powers delegated to them, and a vindication of them by an act not technically legal, the East India Company ought to sanctify it by their approbation; and as the courts of justice are bound down to positive institution, and can take no cognizance of political necessity, that reason alone should be sufficient to give them a claim upon the Crown for protection against the consequence of a meritorious illegality, and to entitle them to hope even for an indemnity from Parliament itself, rather than to dread a prosecution from it: a protection which some of the best and greatest men this country ever saw, have been obliged to petition for, to preserve their lives and fortunes from becoming forfeitures to those very laws they had saved from subversion and ruin.

First, then, in *whom* did the Government of Fort St. George reside?

And in deciding this question, it will not be necessary to go, as some have done, upon the general principles of Government, or to compare the deputation of a Company of Merchants with great political Governments, either ancient or modern. The East India Company being incorporated by act of Parliament, derive an authority from their charter of incorporation to constitute inferior Governments, dependent

on

on them, for the purposes of managing their concerns in those distant parts.

Had the Company, at the time the charter was granted, been such an immense and powerful body as it has since become, from the trade and prosperity of the empire, it might have happened that the forms of these governments would have been accurately chalked out by Parliament, and been made part of the charter; in which case, the charter itself would have been the only place to have resorted to for a solution of any question respecting the powers of such governments; because the Company, by the general law of all corporations, could have made no bye-laws or standing orders repugnant to it. But, on the other hand, the charter having left them at liberty in this instance, and not having fixed constitutions for their territorial governments in India, there can be no possible place to resort to for the solution of such questions, but to the commissions of government granted by the Company, their standing orders, which may be considered as fundamental constitutions, and such explanatory instructions as they may from time to time have transmitted to their servants for the regulation of their conduct. By these, and these alone, must every dispute arising in these governments be determined, except such as fall within the cognizance of the act of the 13th of Geo. III. for the regulation of the Company's affairs, as well in India as in Europe.

First, then, as to the Commission of Government, which is falsely and partially stated in Lord Pigot's Case, where the clause on which they build the most is made to run thus, " And to the end that he " might be the better enabled to manage all the affairs of them the " said Company, they appointed certain persons therein named to " be of their Council at Fort St. George;" these words would cer-
2.
tainly.

tainly imply the President to be an integral and substantive part distinct from the Council. But, unfortunately, no such words are contained in the Commission of Government, which speaks a very different language; almost in itself conclusive against the proposition they wish to establish.

The words are, " And to the end that the said George Lord Pigot " might be the better enabled to manage all the affairs of us the said " Company, we do constitute and ordain George Stratton, Esq; to be " *second* in our Council of Fort St. George, to wit, to be next in the " Council after our said President, George Lord Pigot." It is impossible for the English language more plainly to mark out the President to be merely the *first* in Council, and not an integral, substantive part, assisted by a Council; for, in such case, Mr. Stratton, the Senior Councillor, would, it is apprehended, be called the *first* in Council, instead of the *second* in Council; to wit, next after the President. And this clause in the Commission, so explained, not only goes far by itself to resist the claim of independency in the President, but takes off from the ambiguity and uncertainty which would otherwise cloud the construction of the clause that follows, *viz.* " And we do hereby give and " grant unto our said President and Governor, George Lord Pigot, " and to our Council afore-named, or the major part of *them*, full " power and authority," &c. &c. The President and Council being here named distinctly, the word *them* without the foregoing clause might seem to constitute the President an integral part, and separate from the Council; but the President having been before *constructively* named as the first in Council, Mr. Stratton, though the Senior Councillor, being expressly named the *second*, it is plain the word *them* signifies the Majority of such Council, of which the President is the first, and who is named distinctly, not only by way of pre-eminence, but
because

because all public bodies are called and described by their corporate names, and all their acts witnessed by their common seals, whatever their internal constitutions may be. No heads of corporations have, by the common law of England, any negative on the proceeding of the other constituent parts, unless by express provision in their charters. Yet all their powers are given to them, and exercised by them, in their corporate names; which ever makes the head a party, although he may be dissentient from the act that receives authority from his name.

The standing orders of the Company, published in 1687 and 1702, which may be considered as fundamental constitutions, are plain and unequivocal. They enjoin, "That all their affairs shall be transacted in Council, and ordered and managed as the *Majority of the Council* shall determine, and not otherwise, on any pretence whatsoever." And again, "That whatever is agreed on by the Majority shall be the order by which each one is to act; and every individual person, even the dissenters themselves, are to perform their parts in the prosecution thereof."

The agreement of the Majority being denominated an order, shews as clearly as language can do, that obedience is expected to their determination; and it is equally plain, that no constituent Member of that Government can frustrate or counteract such order, since each individual, even the dissenters themselves, are commanded to act in conformity to it, and to perform their parts in the prosecution thereof. In writing to dispassionate men, it is almost needless to add any arguments to shew, that the President's claim to refuse to put a question adopted by a Majority of Council, stands upon the very same grounds as his claim to a negative on their proceedings; and that if the first

be overturned, the second must fall along with it: for if he be not an integral part of the Government, and his concurrence be consequently not necessary to constitute an act of it, then his office as President, *with respect to putting questions*, must necessarily be only ministerial, and he cannot obstruct the proceedings by refusing to put them; for if he could, his power would be equal, in effect, to that of an integral part; and it would be a strange solecism indeed, if at the same time that all the affairs of the Government were to be managed and ordered by the opinions of a Majority, the President could prevent such opinions from ever being collected; and at the same time that their acts would bind him, could prevent such acts from ever taking place.

But it is altogether unnecessary to explain by argument and inference, that which the Company, who are certainly the best judges of their own meaning, have explained themselves in absolute and unequivocal terms by their instructions sent by Mr. Whitehill to Madras, explanatory of the new commission, by which they expressly declare the Government to be in the major part of the Council; giving the President, or the Senior Councillor in his absence, a casting vote; and direct that every question proposed in writing by any Member of Council shall be put by the Governor, or, in his absence, by the senior Member acting as President for the time being; and that every question carried by a majority shall be deemed the Act of the President and Council.

Had these regulations been made part of the new commission, they might have been considered as a new establishment, and not as a recognition of the former Government; and consequently such regulations, subsequent to the disturbances, could be no protection for the Majority acting under the former commission. But the caution of the East-India Company to exclude the possibility of such a construction is most striking and

and remarkable. Sitting down to frame a new commission, under the immediate pressure of the difficulties that had arisen from the equivocal expressions of the former, they, nevertheless, adopt and preserve the very same words in all the parts on which the dispute arose; the two commissions differing in nothing, except in the special preamble restoring Lord Pigot. And the object of this caution is self-evident; because if, instead of thus preserving the same form, and sending out collateral instructions to explain it, they had rendered the new commission more precise and unequivocal by new modes of expression, it would have carried the appearance of a new establishment of what the Government should in future be, and not as a recognition and definition of what it always had been. But by thus using the same form of commission, and accompanying it with explanatory regulations, they, beyond all dispute, pronounced the former commission always to have implied what they expressly declare the latter to be; as it is impossible to suppose, that the Company would make use of the same form of words to express delegations of authority diametrically opposite to each other.

Indeed, the uniform determinations of the Directors on every occasion where this question has been referred to them, have been in favour of the Majority of Council. Even so late as the 21st April 1777, subsequent to the disturbances at Madras, it will be found upon their records to have been resolved by ballot, "That the powers " contended for, and assumed by Lord Pigot, are neither known in " the constitution of the Company, nor authorised by charter, nor " warranted by any orders or instructions of the Court of Directors." It is clear, therefore, beyond all controversy, that the President and Council were at all times bound and concluded by the decision of the Majority; and that it was his duty to put every question proposed by any member of the board.

To all this, however, they are aware it may be answered, That it does not follow, because the President has no negative, and because he is bound in duty to act ministerially in putting every question regularly proposed by a member, that therefore, on his refusal, they may act validly without him; that there are many corporations in England, in which the head, although he has no negative on the proceedings of the other constituent parts, must, nevertheless, be present, and assisting ministerially in all acts of the corporation, without which they are invalid; and that although the head refuses to act, they cannot assemble and act without him. This is indisputably true, but it cannot by the remotest analogy apply in common sense to the case in question; because no case of necessity can ever by any possibility occur, in England, to justify the most upright proceeding of a public body out of technical form; because if the head of any corporation in England, whose presence or ministerial assistance is necessary to an act of it, refuses to be present, or to do that act without which all business would stop, and the ends of the corporation be frustrated and defeated, the superior powers of the Government are at hand to compel him. The Court of King's Bench will instantly enjoin him, by mandamus, to do the specific act which it is his duty to do, and will imprison him if he refuses. The legal remedy, therefore, excludes the necessity, which can alone vindicate the irregularity. But in subordinate Governments, placed at the opposite side of the globe from the fountains of their authority, the case is very different: The ruling powers of such Governments, although they are bound to act in strict form as long as each part by acting up to the ends of its establishment will permit such forms to operate; yet when they can no longer operate, the ruling powers must either surrender their trusts, and suffer the Government to be annihilated (there being no superior coercive authority to compel the refractory part to perform its duty), or else they must, at their own discretion, de-

vise some other form to exercise the powers vested in them, *at their discretion*; because, as has been already said, express provision is never made for cases which suppose the Government established to fall off from the ends of its institution.

The ordinary powers of the Government of Madras, being thus proved to have resided in the Majority of the Council, it now only remains to shew, by a short state of facts, the necessity which impelled the extraordinary, and otherwise unwarrantable, exercise of such powers, in suspending and imprisoning Lord Pigot, for they once more enter a protest against being thought to have assumed and exercised such power as incident to their commission while the Government subsisted. It is their business to shew, that as long as the Government continued to subsist, they faithfully acted their parts in it; and that it was not till after a total subversion of it by an arbitrary suspension of the governing powers, that they asserted their own rights, and restored the Government by reassuming them.

It would be wholly to defeat the purpose of these pages, were they to swell them beyond the compass of cursory investigation, by minutely tracing the causes of those differences in opinion which gave rise to the disturbances in the Government of Madras; or all the progressive stages which brought them to the crisis in question.

Such details would be very essential, as a justification of their conduct to the Company, and are already to be found at length upon their records: they have likewise been considered by theirs and the Nation's superintending Servants in India, the Supreme Council at Bengal, who have approved of the conduct of the Majority. And it will be matter of high rejoicing and satisfaction to them, to see these matters brought likewise before a Committee of the Nation's Representatives

representatives here, if there shall appear to the House to be grounds to call for them. It is not their wish to skulk from inquiry, but to escape from prejudice: All that is designed by these Observations is, by placing themselves upon legal grounds, and by shewing that the acts they did were necessary for the discharge of the high trusts delegated to them by the Company, to throw it upon their accusers to prove a corrupt abuse of them, that they may not be hastily delivered over to the ignominy of a public prosecution, without evidence of their guilt.

They will, therefore, confine themselves to the instances in which the President claimed an authority which appeared to them to be subversive of the Government; and which they could not submit to, without a high breach of trust to the Company; and by faithfully reciting the consequences that followed from their maintaining the authority of the Government against Lord Pigot's illegal and arbitrary usurpations, submit it to the Reader, how far men are to be proceeded against as criminals, for acts imposed upon them by public duty.

The Writer of Lord Pigot's Case admits, that on the 8th of July he refused, as President, to put a question to the Board (upon the regular motion of a Member) for rescinding a resolution before entered into. This refusal left the Majority no choice between an absolute surrender of their trusts, and an exercise of them without his ministerial assistance. Not that they admit such assistance to be necessary by the constitution of the Government, which declares the acts of the Majority to be acts of the President and Council, though he be dissentient. But taking it to be necessary (in order to prevent all cavil), still there was no other alternative, in the absence of a superior coercive authority to compel him to a specific performance of his duty. But they proceeded no farther than the necessity justified; they did not extend the

the irregularity (if any there was) beyond the political urgency of the occasion. Although their constitutional rights were infringed by the President's claim, they formed no plan for their general vindication, but contented themselves with declaring on that particular occasion, that as the Government resided in them, the President ought not to refuse putting the question; and that the resolution ought to be rescinded.

When the President again refused to put the question, in the month following, for taking into consideration the draught of instructions to Colonel Stuart (which was the immediate cause of all the disturbances that followed), they again preserved the same moderation, and never dreamt of any further vindication of their authority thus usurped, than should be absolutely necessary for the performance of the trusts delegated to them by the Company, which they should have considered as treachery to have deserted. They lamented the necessity of departing even from form; and therefore, although the President's resolution to emancipate himself from their constitutional controul, was avowed upon the public Minutes of the Consultation, they first adjourned without coming to any resolution at all, in hopes of obtaining formality and regularity to their proceedings, by the President's concurrence. Disappointed in that hope, by his persevering to refuse, and driven to the necessity of either surrendering their legal authority, or of devising some other means of exercising it, without his personal concurrence, having (as before observed) no process to compel him to give it, they passed a vote, approving of the instructions; and wrote a letter to Colonel Harper, containing orders to deliver the command to Colonel Stuart; but did not proceed to sign it at that Consultation, still hoping, by an adjournment, to gain Lord Pigot's sanction to acts legal

legal in all points by the constitution of the Government, except perhaps in wanting that form which it was his duty to give them.

The use which Lord Pigot made of this slowness of the Majority to vindicate the decided rights and spirit of the Government by a departure from even its undecided forms, notwithstanding the political necessity which arose singly from his own illegal refusal, is very luckily recorded by one of his Lordship's particular friends in Council, and a party to the transaction. As it would have been otherwise too much to have expected full credit to it from the most impartial mind; they therefore give it in Mr. Dalrymple's own words, and desire no other indulgence from the reader, than to keep in his recollection, while he reads it, the proposition by which they must stand or fall, and which, they trust, is already in full proof; namely, that the Government resided in the Majority, and that their acts were binding on the President and Council.

" It had been discussed, says Mr. Dalrymple, *before the Council met*, what measures could be taken to support the Government established by the Company, in case the Majority should still persist in their resolution to come to no compromise, or reference of the matter in question to the decision of the Court of Directors, but to carry things to extremity. One mode occurred to Lord Pigot, viz. by putting Colonel Stuart in arrest, if he obeyed an order without the Governor's concurrence. To this many objections arose. Colonel Stuart might contrive to receive the orders without the garri- son; and consequently, by the new military regulations, not be liable to the Governor's arrest. If he was arrested, the Majority would of course refuse to issue a warrant for a Court-martial, and confusion and disgrace must be the consequence.

" The

"The only expedient that occurred to any of us was, to ground
 "a charge, in case of making their declaration, in the name of the
 "Council, instead of the President and Council: but here an apprehension
 "arose, that they would see this impropriety, and express
 "their order, not in the name of the Council, as they had limited,
 "but in the name of the President and Council, maintaining that the
 "Majority constituted the efficient Board of President and Council.
 "In this case we could devise no measure to be pursued consistent with
 "the rules of the service; but Lord Pigot said, there was no fear of
 "this, as he insisted, the Secretary would not dare to issue any order in
 "his name, when he forbade it.—It was impossible to know whether
 "Sir Robert Fletcher would attend or not; it was necessary to have
 "every thing prepared, *that nothing might be to be done in Council.*
 "The Company's orders required the charge to be in writing: the
 "Governor, therefore, had in his pocket charges prepared for every
 "probable contingency, whether they began at the eldest or the
 "youngest, and whether the form was an order from themselves, or
 "an order to the Secretary, and whether Sir Robert Fletcher was
 "present or not; it was agreed that the first of us, to whom the
 "paper was presented for signing, should immediately hand it to the
 "President, who was then to produce the charge. The standing or-
 "ders directing, that Members against whom a charge is made, should
 "have no seat, the Members charged were of course deprived of their
 "votes. As our ideas went no farther than *relieving the Governor*
 "*from the compulsion the Majority wanted to lay him under,* it was
 "determined to suspend no more than the necessity of the circumstance
 "required."

With this spare laid for them, during the interval of that adjourn-
 ment which their moderation had led them to, the Council met on the
 22d of August, and, after having recorded their dissent from the Presi-

dent's illegal claim to a negative on their proceedings, by refusing to perform his part in the prosecution of them (though strictly enjoined thereto by the standing orders of the Company), and in which refusal he still obstinately persisted; they entered a minute, declaring it as their opinion, that the resolution of the Council should be carried into execution without further delay, and that the instructions to Colonel Stuart, and the letter to Colonel Harper, should be signed by the Secretary, by order of Council.

This minute was regularly signed by a Majority, and the President having again positively refused his concurrence, they prepared the following letter to Mr. Secretary Sullivan:

SIR,
 WE, the Majority of the Board, having approved of the instructions to Colonel Stuart, and the letter to Lieutenant-Colonel Harper; and the President not only having refused to sign the same himself, but also refused to order you to do it; we are reduced to the disagreeable necessity of directing you to sign the said instructions and letter, by order of Council, and send them to Colonel Stuart."

The letter thus written in the name of the Majority, and under their most public and avowed auspices, it was the immediate purpose of all of them to have signed, in pursuance of the minute they had just before delivered in, expressive of their authority to that purpose. But the President, according to the ingenious plan preconceived during the adjournment, snatched the paper from Mr. Brooke after he and Mr. Stratton had signed it, before the rest of the Majority could put their names to it; and pulling a written accusation out of his pocket, charged them as being guilty of an act subversive of the government, put the question of suspension on both at once, and ordered the Secre-

tary

tary to take neither of their votes; which, according to Mr. Dalrymple's economical scheme of illegality, exactly got rid of the Majority by his own (*the accuser's*) casting-vote.

The weakness and absurdity of the principle (if it deserves the name) on which this suspension was founded, creates a difficulty in seriously exposing it by arguments: yet as it produced all the consequences that followed, they cannot dismiss it without the following remarks.

First, it was a gross violation of the constitution of the government, even admitting him to have been that integral part of it which he assumed to be; for the establishment of that claim could only have given him a negative on the proceedings of a Majority, but never could have enabled him to fabricate one so as to do positive acts. The sudden charge and suspension of Messrs. Stratton and Brooke, and breaking the Majority by putting the question on both at once, would therefore have been irregular, even supposing the concurrence of the Majority to the act which constituted the charge against them to have been unknown to Lord Pigot, and the Minority who voted with him. But when their concurrence was perfectly known; when the Majority of the Board had just before publicly delivered in a minute expressive of their right to authorise the Secretary to sign the order, if the President refused to do it; when the order was avowedly drawn out in pursuance of that minute, which made the whole one act, and was in the regular course of signing by the Majority, who had just before declared their authority to sign it; the snatching the paper under such circumstances, while unfinished, and arraigning those who had already signed it under the auspices of the Majority, as being guilty of an act subversive of the government lodged in that Majority, and turning it

into a Minority by including the votes of the parties charged, was a trick upon the governing powers, which they could neither have submitted to with honour to themselves, or duty to their employers.

Mr. Dalrymple is indeed every way unfortunate in his state of this extraordinary proceeding. His party might with great reason charge *him* with an act subversive of *their* government; for he overturns the very principle on which they alone pretend to have acted. He confesses an apprehension lest the Majority should have expressed their order, not in the name of the Council, as they had hinted, but in the name of the President and Council, maintaining that the Majority constituted the efficient Board of President and Council; in which case, says he, we could not have pursued any measure consistent with the rules of the service. What is this but admitting the government to be in the Majority, and that the President has no negative? For if the government was not in the Majority, and the President had a negative, then such an order to the Secretary, signed by the Majority, to do an act without the President's concurrence, would have been most evidently equally subversive of the government, whether the President were named in it or not; for how could using the President's name cure the criminality, if they had no authority to use it? On the contrary, the presumption of putting his name to an order which they could not possibly have an authority to make at all, in any form whatever, without his concurrence, if he had a negative on their proceedings, would have made the act more criminal than issuing it without his name. It is impossible, therefore, to deny, that Mr. Dalrymple, when he admits the impossibility of devising a regular charge, if the Majority had issued their order in the name of the President and Council, likewise admits the right of the Majority so to have issued it; a right which they could not possibly have by any construction of law, if the President had a negative on their proceedings.

Thus, by their own state of the case, the error was merely in form, and not in substance; an objection which is altogether absurd, when it is reflected, that the right of changing forms is incident to the Supreme Power, wherever it is lodged. The Supreme Legislative Power may at any time alter the executive; which is the reason that in England the King is made a branch of it, to protect the independency of the Prerogative, which would otherwise be at the mercy of the two Houses of Parliament, who might place the execution of the laws in any hands they pleased. If, therefore, the Majority of the Council were invested with the supreme governing powers at Madras, and the President was not an integral part, but bound by their acts; then, however they might be amenable to the Company for changing the executive form they had prescribed to them (which they readily admit themselves to be, and only justifiable by the necessity), yet they could not possibly be called to an account there by any members of the Council; because any charge by the inferior powers of a government against the powers constituting it, for an act subversive of it, is an absolute contradiction in terms, and wholly unintelligible.

Such a power, however, Lord Pigot assumed over the Government of Fort St. George, by converting an act of the Majority, rendered necessary by his refusal to do his duty, into a criminal charge against two Members acting under their authority; and by a trick too shallow to impose on the meanest understanding, cut them off from acting as part of that Majority; by which the powers of the Government were subverted and passed away from them, while they were in the very act of saving them from subversion.

They trust that, to candid men, it is unnecessary to say that they were neither called upon in duty, nor even authorised, had they been willing,

willing, to attend the summons of a Board so constituted by the foulest usurpation ; a Board at which they must either have sacrificed their consciences and judgments, or become the vain opposers of measures destructive to the interests of their employers. They therefore assembled, and answered the illegal summons by a public protest against the usurped authority by which it issued. To this Council, assembled for the single purpose of sending such protest, they did not indeed summon the subverters of the Government, against whom it was levelled ; affairs were arrived at too dangerous a crisis to sacrifice substance to forms, which it is impossible should have been regarded. Lord Pigot and his associates, on receiving the protest against the proceedings of the 22d of August, completed the subversion of the Constitution, by the suspension of the rest of the Majority of the Council ; and ordered Sir Robert Fletcher, the Commander in Chief, to be put under arrest to be tried by a *Court-martial*, for asserting the rights of the *civil* Government as a Member of the Council. This was a crisis in which it was necessary to act with decision, and in asserting their rights, by civil authority, to save the impending consequences of tumult and blood. The period of temporising was past ; and there was no doubt of what it was their duty to do. Charged with the powers of the Government, they could not surrender them with honour ; and it was impossible to maintain them with safety or effect, while their legal authority was treated as usurpation and rebellion.

They therefore held a Council, and agreed, that the fortress and garrison should be in their hands, and under their command, as the legal representatives of the Company ; and as there was every thing to dread from the intemperance of Lord Pigot's disposition, they at the same time authorised Colonel Stuart to arrest his person, if he thought it necessary to preserve the peace of the Settlement.

The

The manner in which Colonel Stuart performed this difficult and critical service has been the cause of much cruel and groundless calumny against him; but from which, however, he has so ably defended himself, and has had the vindication of a Brother of such great abilities and deserved popularity, that it is unnecessary to enlarge upon that head; more especially as his conduct is not the present subject of inquiry. This imprisonment is the only part of their Case which does not stand upon the basis of law; and therefore they do not attempt to cover it by a legal justification. But the justness of the motives, the urgency of the necessity, and the moderation of the execution, they trust, cannot fail to operate as a complete indemnity.

The shocking insinuation conveyed by the concluding sentence of the Case, founded upon the judgment of an infamous tribunal (which has been already branded as illegal, and the conspirators of which they are preparing to bring to justice), is unworthy of an answer.

The public manner in which Lord Pigot was permitted to live in the midst of his friends, and the repeated offers made to him of liberty, if he would leave Madras, it being dangerous to give him that liberty there, are facts sufficiently notorious. No event indeed could in its issue be so unfortunate for them as his death. They had no personal enmity towards him, and it has furnished malice with the most cruel weapons against them. It has stirred up private enmity to warp the course of public justice; shut up the bosoms of some, whose benevolence might have shielded them; and blinded the understandings of others, whose wisdom might have pleaded their cause.

They are confident, however, that such arts will make no impression on the august body, to whose decision they sincerely thank their enemies

ries for submitting their conduct; inasmuch as It can protect their innocence, if It finds it; whereas the Courts below could only, perhaps, mitigate a punishment they might be bound without moral guilt to inflict. They are convinced the English House of Commons will not hastily, and without inquiry, deliver over men to the laws, who avow that they have violated them from public necessity, called upon by a duty paramount to the common obligations of obedience they owed to them as private men. They are well assured, that they will reflect upon the hardships they would entail on the most useful Servants of the State, if the superior duty were left without protection from the law against the infringement of the inferior. They will look back to their own statutes, which stand as eternal records of the protection which Parliament has afforded to good men, from the punishment which virtuous laws and virtuous judges must otherwise have inflicted upon virtue, and grant them protection, if they be found undeserving of punishment.

They have no boon to ask, but that which Englishmen may boldly ask from their own representatives: Not to condemn them unheard; not to send them down to trial, under such circumstances, with the prejudice of a vote of the House of Commons against them, without evidence of something more than illegality; which, in the issue, may prove meritorious, after they are in the hands of the prerogative, and out of the reach of their protection.

F I N I S.

